89-1755

No. A-573

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1989

RAYMOND DOBARD,

Petitioner, Appellant, Plaintiff

vs.

CITY OF OAKLAND, et al.,

Respondent, Appellee, Defendant

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Raymond Dobard
Petitioner in Pro Per
1866 Alcatraz Ave.
Berkeley, CA 94703
415/658-5344 (Deafness)

April 6, 1990
Corrected
May 7, 1990

QUESTIONS PRESENTED FOR REVIEW

1. Whether a judicial determination and hearing was made by the lower court with findings of the existence of a "public nuisance" in petitioner's buildings at 9625 and 9627 B Street and 2941 and 2941½ Myrtle Street, relative to Civil Actions C84-1353 WWS and the related case C85-1359 WWS; or whether the evidence presented by respondents to the court was an "ex-parte" conclusion of a public nuisance; or whether the "ex-parte" findings of respondents as to the fact of a public nuisance is in any way binding upon petitioner Dobard who owns the subject properties and claim they are not a public nuisance.

2. The lower court's memorandum of opinion and order dated August 5, 1988 clearly attest on page one, lines 23-28, that the subject two cases are related:

> Plaintiff's amended complaint in civil action C84-1353 WWS raised essentially identical claims as to the City's demolition of a condemned house he owned on "B" Street in Oakland in a prior action, C-85-1359-JPV (subsequently related to this court as C-85-1359-WWS).

The opinion and order of August 5, 1988 makes further attest, at page 2, lines 7-20 that provide:

> The City provided identical notice and review procedures in making both demolition decisions, procedures which Judge Vukasin and the Ninth Circuit specifically found legally sufficient. The first claim of plaintiff's first amended complaint states numerous claims challenging the validity of the city's procedures (C85-1353 WWS). The language of this claim (C84-1353 WWS) largely tracks that of the first claim of plaintiff's prior action (C85-1359 JPV), which made the same challenges under the same statutes to the city's procedures. As the prior action (C85-1359 JPV) resulted in an award of summary judgment against him (petitioner) on these claims, he (petitioner) is collaterally estopped from bringing them again in a new action. The City's motion for summary judgment on this claim (C84-1353 WWS) is granted.

The ultimate questions presented are whether sufficient material evidence was presented, and shown, by the lower court to the Court of Appeals in the hearsay ex parte evidence of collateral estoppel; or whether the alleged collateral estoppel was in conflict by departing from the accepted and usual course of judicial proceedings in cases of

actual controversy within its jurisdiction under the Federal Declaratory Judgment Act for declaring the rights and other relations of petitioner seeking such declaration on the Justiciable Question of whether or not petitioner's buildings contained a public nuisance before allowing respondents to summarily destroy same for no public purpose. Petitioner informs this Honorable Supreme Court that the mere existence of the "Actual Controversy" was the only necessary prerequisite to the exercise (of Judge Schwarzer in C84-1353 WWS or Judge Vukasin in C85-1359 JPV, of the related case) of the court's power to declare petitioner's rights and other legal relations. Petitioner's rights to equality or equal protection of the law under the Fifth and Fourteenth Amendments forbids the form of hearsay ex-parte findings of alleged "collateral estoppel," as depicted in the lower courts memorandum of opinion and order dated 8-5-88, to be a valid substitute to the organic right of just compensation for the unconstitutional

destruction of petitioner's valuable remedial properties.

3. At the hearing held in the lower court before Judge John P. Vukasin held on April 4, 1985 in regards to petitioner's properties at 9625 and 9627 B Street it was held as follows: The Reporter's Transcript at page 2, lines 19-23, quote Judge John P. Vukasin averring as follows:

> COURT: According to the City of Oakland (respondent), the units are substandard, public nuisance housing. Plaintiff (Petitioner), on the other hand, describes them as valuable, inhabitable, low income property, and the complaint seeks declaratory relief and damages.

Now the ultimate questions presented to this Honorable Supreme Court are whether or not Judge Vukasin's judicial determination, in related case, as stated in the aforementioned April 4, 1985 Reporter's transcript, is an acknowledgement of the existence of the disputed question of public nuisance as a genuine material issue of fact that was clearly in dispute and appropriate for a judicial declaration and determination pursuant to the

Federal Declaratory Judgment Act 28 U.S.C. Section 2201; or whether Judge Schwarzer had legal justification in granting respondents summary judgment based on the hearsay ex parte findings of Judge Vukasin, without a preliminary hearing on the disputed question of public nuisance; or whether Judge Vukasin admitted an actual controversy existed that remains in dispute and unresolved even after the properties were summarily destroyed by his averring in the April 4, 1985 Reporter's Transcript that the complaint seeks declaratory relief and damages.

4. Whether an actual controversy existed that required a judicial determination and findings in regard to the disputed question of the alleged public nuisance.

5. Whether Petitioner's private remedial properties can be summarily destroyed by respondents, that in fact were not a public nuisance, without a preliminary hearing for a judicial ascertainment of the Justiciable Controversy of public nuisance.

6. The memorandum of opinions and order of the lower court dated 8-5-88, and sanctioned by CA-9, avers on page 2, line 26 to page 3, lines 1-7 that:

> The third claim of the amended complaint asserts a right of recovery for inverse condemnation because the finding that the Myrtle Street property was a public nuisance was made without due process. Summary judgment was granted on a substantially identical claim concerning "B" Street property in his prior action (C85-1359 JPV), and he is therefore collaterally estopped from bringing this claim (C84-1353 WWS). The City's motion for summary judgment is accordingly granted on this claim.

The ultimate questions are whether the lower court can grant summary judgment to respondent and have same sanctioned by CA-9, based on collateral estoppell, when the actual controversy of the disputed question of public nuisance for which the lawsuit was being brought has never been litigated nor judicially determined and remain unresolved and still in dispute, especially when petitioner did not have a full and fair opportunity to litigate the disputed issue of

public nuisance at the first trial (C85-1359 JPV); or whether the ex-parte hearsay findings and decision of Judge Schwarzer, of the lower court (C84-1353 WWS), in the 8-5-88 memorandum and order, is a final and conclusive determination binding on petitioner based on collateral estoppell without a judicial declaration and determination on the actual controversy of public nuisance.

> The court held in People ex. rel. Copcutt v. Board of Health, 140 N.Y. 1, 23 L.R.A. 481, 37 Am. St. Rep. 522, 35 N.E. 320, the question arose in a proceedings by certiorari, by which certain dams were determined to be nuisances and ordered to be removed. The court held that the acts under which the dams were removed did not give a hearing in express terms nor could the right to a hearing be implied from any language used in them, but that they were valid without such provision, because they did not make the determination of theboard of health final and conclusive on the owner of the premises wherein the nuisances were allowed to exist; that before such a final and conclusive determination could be made, resulting in the destruction of property, the parties proceded against must have a hearing, not as a matter of favor, but as a matter of right, and the right to a hearing must be found in the acts; that if the decisions of these boards were final and conclusive,

even after a hearing, the citizen would, in many cases, hold his property subject to the judgments of men holding ephemeral positions in municipal bodies and boards of health, frequently uneducated, and generally unfitted to discharge grave judicial functions.

It was said that boards of health under the act referred to could not, as to any existing state of facts, by their determination make that a nuisance which was not in fact a nuisance; that they had no jurisdiction to make any order or ordinance abating an alleged nuisance unless there were in fact a nuisance; that it was the actual existence of a nuisance which gave them jurisdiction to act. There being no provision for a hearing, the acts were not void nevertheless, but the owner had the right to bring his action at common law against all the persons engaged in the abatement of the nuisance to recover his damages, and thus he would have due process of law; and if he could show that the alleged nuisance did not in fact exist, he will recover judgment, notwithstanding the ordinance of the board of health under which the destruction took place.

7. Whether there was a valid and legal material showing presented to the court by respondents for the alleged public nuisances on the date of the summarily destruction of petitioner's "B" Street proper-

ties, on March 19, 1985, relative to C85-1359 JPV, or at the time of the direct and substantial interference of petitioner's property right relative to the Myrtle Street properties, on March 20, 1984, the date petitioner filed his complaint in civil action C84-1353 WWS; or whether respondents presented to the lower court valid and legal material showing reflecting the public necessity for sacrificing petitioner's "B" and Myrtle Street properties that would have endangered the health, moral, property, or well-being of the neighborhood, or for the furtherance of a legitimate government objective.

8. Mr. Justice Brown, in delivering the opinion of this Supreme Court of these United States, said in the often-cited case of Lawton v. Steele, 152 U.S. 133, 14 Sup. Ct. Rept. 499:

> "Nor is a person whose property is seized under the act in question without his legal remedy. If in fact his property has been used in violation of the act, he has no just reason to complain; if not,

he may replevy his fishing nets from the officer seizing them, or, if they have been destroyed, may have his action for their value. In such cases the burden would be upon the defendant to prove a justification under the statute.

The statute in the above case had not provided for any hearing of the question of violation of its provisions, and this Court held that the owner of the fishing nets would not be bound by the determination of the officers who destroyed them, but might question the fact by an action in a judicial proceeding in a court of justice.

Dated: April 6, 1990

Respectfully Submitted,

Raymond Dobard

Raymond Dobard

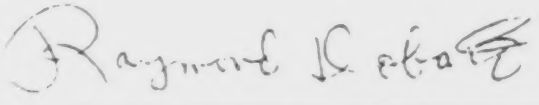
Petitioner, Appellant
in pro persona
1866 Alcatraz Ave.
Berkeley, CA 94703
415/ 658-5344(Deafness)

LIST OF PARTIES

1. City of Oakland - Municipality
2. Julius F. Thomas - Housing Official
3. Eloise Rubin - Housing Official
4. Roy S. Schwyer - Housing Official
5. James A. Blyer - Housing Official
6. Gary Graves - Housing Official
7. Lionel J. Wilson - Mayor
8. Henry Gardner - City Manager
9. Leo Bazile - City Councilman
10. Arrece Jameson - City Clerk

Dated: April 4, 1990

Respectfully submitted,



Raymond Dobard

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TABLE OF AUTHORITIES

DATES OF JUDGMENTS OR DECREES SOUGHT TO BE REVIEWED

- Memorandum of opinion and order of the District Court Northern California, dated August 5, 1988 as C84-1353 WWS.

- Memorandum of opinion and order of the District Court Northern California, dated August 30, 1988 as C84-1353 WWS.

- Memorandum, U.S. Court of Appeals, Ninth Circuit, No. 15272, District Court No. C84-1353 WWS, Filed August 24, 1989.

- Order of CA-9, granting petitioner's motion for Rehearing "en banc" on September 11, 1989.

- Petition for Rehearing en banc filed with the U.S. Court of Appeals for Ninth Circuit on September 20, 1989.

- Appendix of Petition for rehearing filed on September 20, 1989 to C A— 9.

- Order of CA-9 rejecting petitioner's motion for rehearing "en banc", on September 11, 1989.

- Order of CA-9 denying petition for Rehearing on September 11, 1989.

- Order of Supreme Court of United States extending time to file a petition for Writ of Certiorari dated February 16, 1990.

To: The Justices of the Supreme Court of the United States

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioner, Appellant, Plaintiff, Raymond Dobard applies to the Justices of this Honorable Court for filing a petition for Writ of Certiorari on the ground that the Federal Court of Appeals for the Ninth Circuit has decided a federal question relative to the Federal Declaratory Judgment Act, 28 U.S.C. Section 2201, in conflict by departing from the accepted and usual course of judicial proceedings in cases of actual controversy within its jurisdiction for declaring the rights and other legal relations of the petitioner seeking such declaration on the Justiciable Question of whether or not petitioner's buildings (real property) contained a public nuisance; or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision. The Court of Appeals for the Ninth Circuit, hereinafter

referred to as CA-9, has decided a federal question in a way in conflict with applicable decisions of this Supreme Court. The failure of the lower court, and the sanction by CA-9, to declare petitioner's rights and other legal relations on the Justiciable Controversy of the disputed question of public nuisance, for injunctive and declaratory relief, for which the lawsuit was being brought is reviewable by this Supreme Court.

Petitioner has requested the clerk of CA-9, possessed with the records, to certify and transmit those parts of the record deemed essential to a proper understanding of the case by this Supreme Court.

JURISDICTION

This application for Petition for Writ of Certiorari is taken pursuant to 28 U.S.C. 1254(1), which authorizes cases in the courts of appeals to be reviewed by the Supreme Court by Writ of Certiorari granted upon petition of any party to any civil case, before or after rendition of judgment or decree.

SUPREME COURT OF THE UNITED STATES

No. A-573

Raymond Dobard,

Petitioner

v.

City of Oakland, et al.

O R D E R

UPON CONSIDERATION of the application of counsel for the petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including April 10, 1990.

/SOC

Associate Justice of the Supreme Court of the United States

Dated this 16th day of February, 1990

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JUDGMENT SOUGHT TO BE REVIEWED

Appellant/plaintiff's lawsuit against the respondent City of Oakland was being

brought seeking declaratory relief and protection from the court to enjoin the respondent from destroying his valuable private properties as an asserted public nuisance, where in fact there was not a public nuisance.

The lawsuit was being brought pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. Section 2201, for declaratory relief on the justiciable question of the disputed controversy of public nuisance for which was a genuine material issue of fact that was clearly in dispute and triable by a jury and was appropriate for a judicial declaration and determination.

In regard to C85-1359 WWS, appellant's valuable remedial properties at 9625 and 9627 B Street were unconstitutionally destroyed as a wrongful abatement of an asserted nuisance after $140,000 of remedial alteration was expended by appellant to eliminate the alleged public nuisance.

In regard to C84-1353 WWS, appellant's valuable remedial properties at 2941 and

2941½ Myrtle Street, were physically invaded or damaged by respondent, after appellant expended an excess of $200,000 of remedial alteration to eliminate the alleged public nuisance, where in fact there was no nuisance. This arbitrary invasion of appellant's Myrtle Street properties was direct and substantial and interfered with the use and enjoyment of appellant's private property rights as a taking of private property without just compensation and in violation of the Fifth Amendment to the United States Constitution.

Appellant argues that based on the Federal Declaratory Judgment Act, 28 USC Section 2201, appellant was entitled to a hearing in both lawsuits at some stage of the proceeding in the U.S. District Court for declaring appellant's rights and other legal relation in regard to the actual controversy of the alleged public nuisance that was within the jurisdiction of the U.S. District Court of Northern California.

There was no findings made by the U.S.

District Court as to whether appellant's structures would have to be remo ved in order to abate the alleged nuisance.

Failure of the District Court to adjudicate and judicially determine the justiciable controversy of nuisance were abuses of discretion that deprived appellant of having a full and fair opportunity to litigate the two causes of actions, because the justiciable question remains in dispute and unresolved.

COMPANION CASE

The United States Supreme Court has held in North American, etc. Co. v. Chicago, 29 S.Ct. 101, 15 Ann. Cas. 276, that it may be a reasonable method and necessary for the public health to destroy first and investigate afterward; but if sound valuable property is destroyed as a result of such necessity, it is taken for the public use in the constitutional sense and the owner is entitled to compensation. Consideration must, of course, be given to the possibility of eliminating the hazard by means other than destruction. Albert v. City of Mountain Home, 337 P.2d 337

THE APPEALS COURT MEMORANDUM WAS DECIDED ON INCOMPLETE FACTUAL BASIS

The memorandum of the Court of Appeals for the Ninth Circuit dated 8/24/89 failed to address a question of exceptional importance relative to the Federal Declaratory Judgment Act, 28 U.S.C. Section 2201 for declaring the rights and other legal relations of appellant in regard to his two complaints being brought for injunctive and declaratory relief on the actual controversy of the justiciable question of public nuisance for which the two lawsuits, C84-1353 WWS and its related case C85-1359 WWS, were being brought for a judicial declaration and determination. Appellant is aggrieved by the unconscionable omission of findings or judicial declarations and determination that the U.S. District Court had a legal responsibility to declare pursuant to Federal Rules of Civil Procedure Rule 57, and Title 28 U.S.C. Section 2201(a) relative to appellant's actual controversy of whether or not appellant's buildings con-

tained a public nuisance and whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

STAGES IN THE PROCEEDING AT WHICH THE FEDERAL QUESTION OF THE "JUSTICIABLE CONTROVERSY" RELATIVE TO THE FEDERAL DECLARATORY JUDGMENT ACT SOUGHT TO BE REVIEWED WAS RAISED

The various stages in the proceeding at which the Federal Question of the Justiciable controversy of the disputed public nuisance sought to be reviewed was raised by appellant as follows:

A. On March 20, 1984 appellant's complaint was filed in the U.S. District Court as Civil Action C84-1353 WWS. The claim and complaint was being brought for injunctive and declaratory relief to restrain the destruction of appellant's apartment buildings at 2941 and 2941½ Myrtle Street in Oakland, California, with the city of Oakland as

the defendant. Paragraphs 11 and 12 of this complaint for injunctive and declaratory relief was the stage of first instance in the proceedings at which the federal questions sought to be reviewed were raised. Paragraph eleven (11) depict as follows:

> There is no justification or legal right for defendant City to destroy plaintiff's apartment buildings and his real property. The seven apartments are sound and well constructed. They do not endager the property, health, moral, or well being of the community. They do not constitute a slum or a fire hazard and they violate no zoning ordinance. Plaintiff has had rehabilitation work performed to the properties on Myrtle Street at an approximate value of $170,000 in labor and materials.

Paragraph twelve (12) depicts as follows:

> Defendant informed, implied, and led plaintiff to believe that all unsafe, substandard, and nuisance conditions had been corrected and removed by previous rehabilitation work performed under various building permits as reflected by the inspections and approvals of City officials.

B. The stage of the second instance in the proceedings at which the federal questions sought to be reviewed was raised on February 4, 1985 in the related case Civil

Action C85-1359 WWS (formerly JPV before related case order) in the complaint for injunctive and declaratory relief to restrain destruction of appellant's properties at 9625 and 9627 B Street, that were later unconstitutionally destroyed without the adjudication or determination of the Justiciable Controversy. Paragraphs 11 and 12 are similar to paragraphs 11 and 12 above in Civil Action C84-1353 WWS.

C. The stage of another instance in the proceedings at which the federal question sought to be reviewed was raised on September 23, 1987 in the U.S. District Court by means of appellant's First Amended Complaint in (C 84-1353 WWS) paragraphs eleven and twelve and similar to the above paragraphs eleven and twelve.

D. The stage of another instance in the proceeding at which the federal question sought to be reviewed was raised on April 4, 1985 as reflected in the reporter's transcript of that date in the District Court in Civil Action C85-1359 JPV at page 2, lines

19-23 that quote Judge John P. Vukasin, Jr. averring as follows:

> COURT: According to the City of Oakland, the units are substandard, public nuisance housing. Plaintiff, on the other hand, describes them as valuable, inhabitable, low income property, and the complaint seeks declaratory relief and damages.

Appellant informs this Honorable Court that Judge Vukasin, in this related case, clearly makes an admission that there is an actual controversy on the disputed federal question, however he fails to adjudicate and judicially determine same by a hearing pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. Section 2201.

E. Appellant's opening brief filed November 30, 1988 in the United States Court of Appeals for the Ninth Circuit, DOCKET #15272 pointed out and made that Court aware of the federal question sought to be reviewed that was raised as an abuse of discretion by the District Court and error of law by that Court's failure to comply with the Federal Declaratory Judgment Act in the review and findings (see page 4 of

Appellant's opening brief); additional facts in regard to the federal question that the Court of Appeals failed to address and render a judicial declaration and determination (see page 6 of appellant's opening brief regarding the Justiciable Controversy).

F. Another stage of the proceedings at which the federal question of the Justiciable controversy was raised was in appellant's Petition for Rehearing en Banc filed in the Court of Appeals for the Ninth Circuit on September 20, 1989 at pp. 1-7. Docket # 15272

THE UNITED STATES SUPREME COURT HAS JURISDICTION FOR REVIEW

For all the foregoing reasons as stated above, the Federal Question of the Justiciable Controversy of the disputed public nuisance was timely and properly raised continuously for five (5) years and intentionally not passed upon by both the U.S. District Court in the first instance and also in the appellate court which gives this Honorable United States Supreme Court jurisdiction to

review the judgment on writ of certiorari.

Dated: April 6, 1990

Respectfully submitted,

Raymond Dobard

Raymond Dobard, Petitioner
Appellant/Plaintiff in pro per

APPENDIX

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED AUG. 24, 1989

RAYMOND DOBARD,	No. 88-15272
Plaintiff-Appellant,	D.C. No. CV-84-1353-WWS
v.	MEMORANDUM*
CITY OF OAKLAND, et al.,	
Defendants-Appellees.	

Appeal from the United States District Court
for the Northern District of California
William W. Schwarzer, District Judge, Presiding

Submitted August 16, 1989**
San Francisco, California

Before: CHAMBERS and WIGGINS, Circuit Judges, and BREWSTER***, District Judge

This is the second time this case has

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel finds this case appropriate for submission without argument pursuant to Fed. R. App. P. 34(a) and 9th Cir. R. 34-4.

*** Hon. Rudi M. Brewster, United States District Judge for the Southern District of California, sitting by designation.

been before us on appeal. The first time we reversed the district court's dismissal of the case as an unduly harsh sanction for Mr. Dobard's failure to prosecute.[1/] See Dobard v. City of Oakland, No. 85-1706, p. 3-4 (9th Cir. June 11, 1987) (memorandum). On remand, Mr. Dobard filed a first amended complaint alleging five separate claims against the City of Oakland and several individuals. Each claim is in one way or another associated with the City of Oakland's demolition of Mr. Dobard's condemned properties located on Myrtle and "B" Streets. Sometime after the filing of the amended complaint the City of Oakland brought a motion for summary judgment. The district court granted the motion with respect to three of theclaims and dismissed the remaining two claims with prejudice. Shortly thereafter the the district court denied Mr. Dobard's motion brought under Fed. R. Civ. P. 60(b) to have the judgment set

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1 We also held that we did not have jurisdiction to review the district court's interlocutory order setting aside an earlier default judgment against the City of Oakland.

aside. Mr. Dobard timely appeals the initial ruling and the denial of his subsequent motion. We have jurisdiction, 28 U.S.C. § 1291 (1982), and we affirm.

DISMISSAL OF THE SECOND AND FIFTH CLAIMS

We review the district's court's dismissal of two of Mr. Dobard's claims de novo. Since Mr. Dobard is acting pro se, we are to construe the pleadings liberally in his favor in order to afford him any benefit of the doubt. See Bretz v. Kelman, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985) (en banc). Mr. Dobard asserts initially that the district court erred in dismissing his second and fifth claims because of our decision in the earlier appeal. In essence, he asserts that because we reversed the district court's earlier dismissal, we implicitly prevented the district court from dismissing his suit for any reason whatsoever. This, of course, simply is not the case. The district court appropriately considered whether Mr. Dobard's complaint stated claims for which relief could

be granted.

The second claim in Mr. Dobard's complaint alleges that the City of Oakland's "neglectively (negligently) filed two abstract judgment liens" against his "B" Street property in violation of unspecified constitutional rights. The district court properly dismissed this claim because, as the Supreme Court has made abundantly clear, a claim under 42 U.S.C. § 1983 (1982) cannot be supported by allegations of mere negligence. See Daniels v. Williams, 474 U.S. 327, 332 (1985). Mr. Dobard argues nevertheless that other allegations in the complaint assert that the City of Oakland's conduct was "intentional, fraudulent, and invidious." Even supposing these allegations adequately satisfy Fed. R. Civ. P. 9(b)'s particularity requirement--which we doubt, see Semegen v. Weidner, 780 F.2d 727, 731 (9th Cir. 1985)--Mr. Dobard could not succeed on his claim because it arose in 1983, over one year before the instant action was filed, and therefore is barred by the one-year

California statute of limitation. Cal. Code Civ. Pro. § 340(3) (West Supp. 1987); see Wilson v. Garcia, 471 U.S. 261, 280 (1985) (claims under § 1983 characterized as personal injury actions for purposes of applying state's statutes of limitation). The fifth claim for relief alleges that the City of Oakland has "disturbed" Mr. Dobard in his possession and enjoyment of his property. Again, as the Supreme Court has emphasized, "Section 1983 imposes liability for violations of rights protected by the Constitution, not for violations of duties of care arising out of tort law." Baker v. McCollan, 443 U.S. 137, 146 (1979). Merely disturbing one in the use and enjoyment of his property is nothing akin to a constitutional violation. Accordingly, the district court properly dismissed the second and fifth claims.

SUMMARY JUDGMENT OF FIRST, THIRD, AND FOURTH CLAIMS

We review the district court's grant of summary judgment de novo. Darring v. Kincheloe,

783 F.2d 874, 876 (9th Cir. 1986). Viewing the evidence in a light most favorably to Mr. Dobard, we must decide whether there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law. Ashton v. Cory, 780 F.2d 816, 818 (9th Cir. 1986). We apply this standard separately to each of Mr. Dobard's three remaining claims. The first claim, brought under various civil rights statutes, is a challenge to the City of Oakland's procedures in condemning and demolishing Mr. Dobard's Myrtle Street property. The third claim seeks recovery for inverse condemnation of the Myrtle Street property. And the fourth claim alleges a conspiracy under 42 U.S.C. § 1985 (1982) by the Mayor of Oakland and various City employees to have Mr. Dobard's properties declared substandard and public nuisances and to have the prior default judgment in this case fraudulently vacated. We conclude, as the district court concluded below, that there are no material

disputed issues of fact as to any of these claims and that the City of Oakland is entitled to judgment as a matter of law.

Mr. Dobard previously brought suit against the City of Oakland alleging nearly identical civil rights violations associated with the procedures employed by the City of Oakland in the condemnation and demolition of his property located on "B" Street. His suit was unsuccessful. The district court granted the City of Oakland's motion for summary judgment on the ground that Mr. Dobard was not denied any rights of procedural due process. This court affirmed, stating--contrary to the nearly identical allegations of Mr. Dobard's complaint here--that Mr. Dobard "received all the process he was due." Dobard v. City of Oakland, No. 85-2715, slip op. at 4 (9th Cir. March 10, 1987) (memorandum), cert. denied, 108 S. Ct. 685 (1988). Mr. Dobard seeks to renew these same issues in his first and third claims for relief. He cannot succeed, however, because the doctrine of collateral

estoppel precludes Mr. Dobard from raising once again the issues that have been litigated and decided against him.[2/] See Deutsch v. Flannery, 823 F.2d 1361, 1364 (9th Cir. 1987).

Mr. Dobard has equally failed to sustain his judgment burden for his fourth claim. A claim for conspiracy under section 1985 cannot succeed without proof of a race-based animus. Bretz v. Kelman, 773 F.2d 1026, 1028-29 (9th Cir. 1985) (en banc). Mr. Dobard's reliance on the allegations of his complaint is, of course, insufficient to sustain his summary judgment burden. See Kung v. FOM Investment Corp., 563 F.2d 1316, 1317-18 (9th Cir. 1977)

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[2] The district court construed Mr. Dobard's third claim for inverse condemnation as stating a procedural due process violation because, according to the allegations of the complaint, the "taking" of the property was effected by declaring it a public nuisance without adequate procedural safeguards. So construed, the claim merely restates the gist of thefirst claim of relief, which is clearly barred by the doctrine of collateral estoppel. If, on the other hand, the claim is construed literally as a claim for inverse condemnation, summary judgment would still be proper because Mr. Dobard has failed to point to evidence in the record that he has sought and been denied just compensation from the appropriate state agency. See Williamson County Regional Planning Comm'n v. Hamilton Bank, 473 U.S. 172, 194 (1985).

(per curiam) (conclusory allegations, unsupported by factual data, do not create triable issues of fact). He has not pointed to any matters beyond the complaint[3/] sufficient for there to be enough "evidence on which the jury could reasonably find for plaintiff." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). Accordingly, the district court properly granted summary judgment on Mr. Dobard's fourth claim.

RULE 60(B) MOTION

Mr. Dobard's motion to set aside the district court's earlier judgment was properly denied for the reasons stated by the district court in its memorandum opinion. Nothing raised by Mr. Dobard in that motion--as in this appeal--provided a sufficient basis for concluding that the district court erred

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[3] Mr. Dobard's reliance on an exhibit which indicates that the City of Oakland was not entirely forthright in having the earlier default judgment set aside is misplaced. Although such evidence is arguably indicative of wrongdoing, it nevertheless is insufficient to satisfy the requirement under § 1985 that there be evidence of a race-based animus.

in dismissing two of Mr. Dobard's claims and granting summary judgment on the other three.

ATTORNEY'S FEES ON APPEAL

The City of Oakland has requested that it be awarded its costs and attorney's fees on appeal. "Although attorney's fees may be awarded (under 42 U.S.C. § 1988) at the appellate as well as the trial level, Sotomura v. County of Hawaii, 679 F.2d 152 (9th Cir. 1982), a prevailing defendant is entitled to an award of fees only where the plaintiff's action was 'frivolous, unreasonable, or without foundation.'" United States ex rel. Chunie v. Ringrose, 788 F.2d 638, 647 (9th Cir. 1986), cert. denied, 479 U.S. 1009 (1986) (quoting Hughes v. Rowe, 449 U.S. 5, 14 (1980)). Mr. Dobard's appeal borders on the frivolous. Nevertheless, because of Mr. Dobard's status as a pro se litigant, we will give him the benefit of the doubt and deny the City of Oakalnd's request for attorney fees. See Miller v. Los Angeles County Bd. of Educ., 827 F.2d 617, 620 (9th Cir. 1987).

AFFIRMED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED Dec. 15, 1989

RAYMOND DOBARD,	)	No. 88-15272
	)	
Plaintiff-Appellant,	)	D.C. No. CV-84-1353-WWS
	)	
v.	)	
	)	ORDER
CITY OF OAKLAND, et al.	)	
	)	
Defendants-Appellees.	)	
	)	

Before: CHAMBERS and WIGGINS, Circuit Judges, and BREWSTER* District Judge

The panel has voted to deny the petition for rehearing and Judge Wiggins has voted to reject the suggestion for a rehearing en banc.

The full court has been advised of the suggestion for en banc rehearing, and no judge of the court has requested a vote on it. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a hearing en banc is rejected.

* Hon. Rudi M. Brewster, United States District Judge for the Southern District of California, sitting by designation.

Raymond Dobard
1866 Alcatraz Ave.
Berkeley, CA 94703
(415) 658-5344 (deafness)

Petitioner
Appellant in Pro Persona

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Raymond Dobard, Appellant/Petitioner vs. City of Oakland, a Municipal Corporation; Julius F. Thomas, Eloise Rubin, Roy S. Schweyer, James A. Blyer, Gary Groves, Lionel J. Wilson, Henry Gardner, Leo Bazile and Arrece Jameson both individually and in their representative capacity as officers and employees of the City of Oakland, Appellees/Respondents	CIVIL DOCKET NO. 88-15272 D.C. NO. C84-1353WWS APPELLANT REQUESTING PARTS OF THE RECORD TO BE CERTIFIED AND TRANSMITTED TO THE U.S. SUPREME COURT FOR REVIEW ON PETITION FOR CERTIORARI (SUP. CT. RULE 19.1)

RE: APPLICATION NO. A-573; PETITIONER RAYMOND DOBARD

To: Clerk of the U.S. Court of Appeals

for the Ninth Circuit:

Petitioner, Raymond Dobard, request parts of the record to be certified and transmitted to the United States Supreme Court that are deemed essential to a proper understanding of the case for review on petition for certiorari pursuant to Supreme Court Rule 19.1.

DOCUMENTS TO BE CERTIFIED AND TRANSMITTED BY NUMERICAL ORDER DESIGNATED BY APPELLANT AS FOLLOWS:

Documents and excerpts regarding stages in the proceedings at which the Federal question of the "Justiciable Controversy relative to the Federal Declaratory Judgment act sought to be reviewed was raised.

(1.) Pages 1, 4 and 5 of the complaint for injunctive and declaratory relief, etc. filed with the U.S. District Court for the Northern District of California, filed on March 20, 1984, as Civil Action C84-1353 WWS.

(2.) Pages 1, 4 and 5 of the complaint for injunctive and declaratory relief, etc., as the court ordered related case, filed with the District Court for Northern District of California on February 4, 1985 as Civil Action C85-1359 JPV that transformed by related case order to C85-1359 WWS.

(3.) Pages 1, 5 and 6 of First Amended Complaint for injunctive and declaratory relief, etc., filed with the District Court on September 23, 1987 as Civil Action No. C84-1353 WWS.

(4.) Page 2, of the Reporter's Transcript in the related case proceedings of C85-1359 JPV, dated April 4, 1985 of the U.S. District Court of Northern California.

(5.) Pages 4 and 6 of appellant's opening brief filed in U.S. Court of Appeals for the Ninth Circuit on November 30, 1988.

(6.) The order of the U.S. Court of Appeals for the Ninth Circuit, before: Chambers and Wiggins, Circuit Judges, and Brewster District Judge, that was filed on September 11, 1989 granting appellant's motion for rehearing "en banc".

(7.) (Appellant's) petition for Rehearing En Banc filed with U.S. Court of Appeals for the Ninth Circuit (CA-9) on September 20, 1989.

(8.) (Appellant's) Appendis of Petition for Rehearing filed on September 20, 1989.

(9.) Emergency petition for Writ of Mandamus filed on November 7, 1989, filed with CA-9 and served on Respondent U.S. District Court on November 7, 1989.

(10.) The denial of (Appellant's) Emergency Petition for Writ of Mandamus before: Wiggin, Hug and Brunetti, Circuit Judges and denied on November 7, 1989.

(11.) RE: Related case No. C88-4286 WWS (Appellant's) Emergency Petition to vacate Judgment in related case--Extrinsic "collateral" fraud F.R.C.P. Rule 60(b),

filed on November 7, 1989 in the U.S. District Court for Northern California and also filed on the same date with CA-9.

(12.) Order of the Court of CA-9 before: Wiggins and Chambers, Circuit Judges, and Brewster District Judge, denying appellant's petition for Rehearing and Judge Wiggins voting to reject the previous order granting appellant's motion for a hearing "en banc" that was granted on 9-11-89.

(13.) The Supplemental Statement, in full, of Raymond Dobard relative to Abatement of Public Nuisance and in support of plaintiff's Emergency Motion for Reconsideration of Memorandum of opinion and order dated 8-5-88, that was filed with the District Court on August 17, 1988.

(14.) Copies of U.S. District Court's memorandum of opinions and orders dated 8-5-88 and 8-30-88.

(15.) Memorandum of CA-9 before: Chambers, Wiggins and Brewster dated 8-24-89 affirming the U.S. District Court's decisions of 8-5-88 and 8-30-88.

Dated: April 4, 1990

Respectfully submitted,

Raymond Dobard

Raymond Dobard, Petitioner, Appellant, Plaintiff in pro persona

Copies to: 1. Counsels for Respondent
2. U.S. Supreme Court

DECLARATION OF SERVICE BY MAIL

I am a citizen of the United States, over the age of 18 years, and not a party to the within action. My business address is 1966 Alcatraz Ave., Berkeley, California 94703.

On May 7, 1990, I served the following: 1. WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT; 2. PETITIONER'S SUPPLEMENTAL BRIEF ON WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT; 3. PETITIONER'S REPLY BRIEF ADDRESSING RESPONDENT'S MEMORANDUM IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT.

on the parties to said action by placing a true copy thereof in a sealed envelope with postage fully prepaid thereon, in the United States mail at Berkeley, California addressed as follows:

1. LAW OFFICES OF
CHARLES O. TRIBEL, JR.
505 - 14th Street # 1000
Oakland, CA 94703

2. OFFICE OF THE CLERK
U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT
P.O. Box 547
San Francisco, CA 94101

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Berkeley, California on May 7, 1990.

-45-

Gregory M. Harrison

89-1755

No. A-573

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1989

RAYMOND DOBARD,

Petitioner, Appellant, Plaintiff

vs.

CITY OF OAKALND, et al.,

Respondent, Appellee, Defendant

PETITIONER'S SUPPLEMENTAL BRIEF ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Raymond Dobard
Petitioner in Pro Per
1866 Alcatraz Ave.
Berkeley, CA 94703
415/658-5344 (Deafness)

April 30, 1990

To: The Justices of the Supreme Court of the United States

October Term, 1989

Raymond Dobard, Petitioner

v.

City of Oakland, et al., Respondent

Petitioner's Supplemental Brief on Writ of Certiorari in the United States Court of Appeals for the Ninth District

Petitioner, appellant, plaintiff Raymond Dobard hereby files this supplemental brief pursuant to Supreme Court Rule 22(.6) calling the court's attention to supportive cases and legislation or other intervening matters not available at the time of petitioner's last filing of petition executed on April 6, 1990 herein.

SUPPORTIVE CASE LAW FOR RIGHT OF ACTION AFTER PROPERTY HAS BEEN DESTROYED.

The United States Supreme Court held in North American Storage Co. v. Chicago 211 U.S. 307, that a party whose property is destroyed has a right of action after the acts which is not affected by the "ex-parte" condemnation of state officers.

> Mr. Justice Brown, in delivering the opinion of this Supreme Court upheld the aforementioned principles of the supra North American Storage Co. case in the court's opinion of the case of Lawton v. Steele as recited on pp. 13-14 of the petition on writ of certiorari herein dated April 6, 1990.

The court held in People ex. rel. Capcutt v. Board of Health, request judicial notice to pp. 11-12 of this petition for writ of certiorari dated 4-6-90 that boards of health under the act referred to could not, as to any existing state of facts, by their determination make that a nuisance which was not in fact a nuisance; and their determination was not final and conclusive on the owner of the premises wherein the nuisance were allowed to

exist; that before such a final and conclusive determination could be made, resulting in the destruction of property, the parties proceeded against must have a judicial hearing, not as a matter of favor, but as a matter of right, and the right to a hearing must be found in the acts.

The court held in Miller v. Horton, 152 Mass. 540, 26 N.E. 100, 10 L.R.A. 116, that the decision of the Board of Health in declaring a nuisance was not conclusive and that the legislature may authorize destruction of property in an emergency without a hearing beforehand. But it does not follow that it can throw the loss on the owner without a hearing. If he cannot be heard beforehand he may be heard afterward. The statute may provide for paying him in case it should appear that his property was not what the legislature had declared to be a nuisance, and may give him his hearing in that way.

The Supreme Court of Wisconsin held in

Lowe v. Conroy 97 N.W. 942, 102 AM St. Rap. 983, that it is no protection to health officers for destroying private property which in fact is no such nuisance or source of danger. An owner cannot be deprived of the right, either before or after such taking of his property, to have a judicial inquiry whether in fact he has forfeited the right to his property by coming within the condemnation of the law. In the absence of judicial inquiry wherein the owner is given full opportunity to establish that no nuisance or cause of sickness exists as claimed, the board of health cannot declare a thing a nuisance or source of danger to public health which is not so in fact.

The same principles as above existed or was amplified in the following cases relative to an owner's right to have hearing after houses are destroyed if one cannot obtain hearing prior thereto: Hutton v. City of Camden, 39 N.J. Law, 122; Pearson v. Zehr, 29 N.E. 854; Gaines v. Waters, 44 S.W. 353.

For all the foregoing reasons, the Jus-

ticiable Controversy of the disputed question of public nuisance has never been judicially determined, nor resolved and remain in dispute and the duty to determine what is a public nuisance is judicial in character and petitioner was entitled to a judicial determination at some point in the proceeding as to whether or not his subject B and Myrtle Street buildings contained a public nuisance and a source of danger.

Based on the above and foregoing this Honorable Supreme Court should grant an order to review the decision of the court below that was in conflict by departing from the accepted and usual course of judicial proceedings in cases of actual controversy within its jurisdiction relative to deciding a federal question relative to the Federal Declaratory Judgment Act, 28 U.S.C. Section 2201.

Dated: April 30, 1990

Respectfully Submitted,

Raymond Dobard

Raymond Dobard, Petitioner, Appellant, Plaintiff in pro persona

89-1755

No._____

In the Supreme Court

of the

United States

October Term, 1989

Raymond Dobard

Petitioner

vs.

City of Oakland, et al.,

Respondent

MEMORANDUM IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

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JAYNE W. WILLIAMS, City Attorney
RANDOLPH HALL, Assistant City Attorney
JAMES ARMSTRONG, Assistant City Attorney
One City Hall Plaza, Fifth floor
Oakland, CAlifornia 94612

CHARLES O. TRIEBEL, JR.*
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Oakland, California. 94612

*Counsel of Record

In the Supreme Court of the United States

October Term, 1989

Raymond Dobard, Petitioner

v.

City of Oakland, et al., Respondent

MEMORANDUM IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit

MEMORANDUM FOR DEFENDANTS IN OPPOSITION

Petitioner recites that he has raised federal issues concerning his Oakland property for the past five years. The federal issues described appear to be violation of due process and illegal taking without compensation. The error asserted seems to be that petitioner received no "hearing" due to disposition of his claims

by summary judgment.

Petitioner's claims have already been decided. Dobard v. City of Oakland (9th Cir. 1987) No. 85-2715, cert denied, 108 S. Ct. 685 (1988). When petitioner subsequently realleged his claims they were of course precluded due to the doctrine of collateral estoppel.

Petitioner now argues application of this doctrine is "hearsay" and "ex-parte" (Petition, pp. 6-7) and challenges the granting of summary judgment based on collateral estoppel. (Petition, p. 10)

These arguments are patently frivolous, and petition for certiorari must consequently be denied.

The Court of Appeals in denying respondents' request for attorneys fees held that, because of petitioner's pro se status, he would be given the benefit of the doubt.

Respondents question how long this exercise can be extended without holding petitioner responsible for his flagrant abuse of the legal process.

It is noted that petitioner has, for a third time, appealed to the Ninth Circuit from grant of summary judgment on these same issues.[1] Another petition for certiorari will presumably follow this one.

Accordingly, respondents request this court direct the Court of Appeals to grant attorneys fees to respondents herein.

Dated: April 27, 1990

Respectfully submitted,

Charles O. Triebel, Jr.

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[1] Petitioner also filed an emergency petition for writ of mandate, which was denied November 7, 1989 (Memorandum Order, Ninth Circuit No. 89-70475) as well as all manner of emergency and ex parte motions, and accusations of judicial misconduct in the District Court too numerous to mention.

PROOF OF SERVICE BY MAIL (CCP 1013a, 2015.5)
STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I am a citizen of the United States and a resident of the county of Alameda. I am over the age of eighteen years and not a party to the within above entitled action. My business address is 405 14th Street, Suite 1000, Oakland, California 94612.

On April 27, 1990, I served the within **MEMORANDUM IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI** on party in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Oakland, California addressed as follows:

Raymon Dobard
1866 Alcatraz Avenue
Berkeley, Ca. 94703

I certify (or declare), under penalty of perjury that the foregoing is true and correct.

Executed on April 27, 1990 at Oakland, California.

David Milliken

89-1755

No. A-573

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1989

RAYMOND DOBARD,

Petitioner, Appellant, Plaintiff

vs.

CITY OF OAKLAND, et al.,

Respondent, Appellee, Defendant

PETITIONER'S REPLY BRIEF ADDRESSING RESPONDENT'S MEMORANDUM IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

Raymond Dobard
Petitioner in Pro Per
1866 Alcatraz Ave.
Berkeley, CA 94703
415/658-5344 (Deafness)

April 30, 1990
Corrected May 7, 1990

To: The Justices of the Supreme Court of the United States

October Term, 1989

Petitioner's Reply Brief addressing Respondent's Memorandum in Opposition to Petition For Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit (Rule 22(.5))

PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION

Petitioner requests this Honorable Court to grant its order for review of the decision of the Federal Court of Appeals below for the Ninth Circuit, based on the merits herein and respondent's failure to adequately address or reasonably oppose the primary and basic fundamental statement of the federal questions set forth in the petition for Writ of Certiorari for review and consideration.

The federal questions herein are relative to the Court of Appeals for the Ninth Circuit deciding a federal questions regarding the Federal Declaratory Judgment Act, 28 U.S.C. Section 2201, in conflict of departing from

the accepted and usual course of judicial proceedings in cases of "actual controversy" within its jurisdiction for declaring rights and other legal relations of this petitioner seeking such declaration on the "Justiciable Question" of whether or not petitioner's his subject properties contained a public nuisance and sources of danger; or so far sanctioned such departure by the lower Federal District Court, as to call for an exercise of this Supreme Court's power of supervision.

Respondents are elusively avoiding taking any opposition or facing-up to the real and primary issue in this review relative to the "Justiciable Controversy" of the disputed question of public nuisance issue as clearly expressed in the petition for Writ of Certiorari. Respondent's avoiding taking reasonable opposition to the primary issue in review regarding the Federal Declaratory Judgment Act should be treated by this Court as a failure of respondents to reasonably oppose the petition for Writ of Certiorari, thus empowering this

Honorable Supreme Court to grant and issue its order to review the decision below. This granting of the court's review order would be grounded on Supreme Court Rule 21(a) that provide: "Only the questions set forth in the petition or fairly included therein will be considered by the court."

COLLATERAL ESTOPPEL IS NOT APPLICABLE TO THIS PETITION FOR WRIT OF CERTIORARI

Petitioner was prejudicially deprived of a fair trial by the Federal District Court below that was affirmed by the Court of Appeals that prevented petitioner from having a full and fair opportunity to litigate all of his rights or defenses relative to a final and conclusive determination on the actual controversy of the disputed question of public nuisance, which in fact there were no public nuisance.

By extrinsic acts of respondents, petitioner was prejudicially deprived of a judicial inquiry on the Justiciable Controversy of the disputed question of public nuisance. Peti-

tioner was entitled to a hearing in both lawsuits at some stage of the proceedings in Civil Actions C84-1353 WWS, relative to the invasion of rights for the Myrtle Street Properties and the related case order for civil action C85-1359 WWS, relative to the unconstitutional destruction of the valuable remedially-abated B Street Properties.

There were no judicial determinations and hearings made by the lower court in civil action C84-1353 WWS or C85-1359 JPV, with findings of the existence of a "public nuisance" that would endanger the health and welfare of the community within the buildings of the subject Myrtle or B Street properties; at the time that the two lawsuits were being brought or any time thereafter; nor any findings as to whether the alleged public nuisance could be abated without the removal of the subject buildings; nor any findings or judicial determination made as to whether the "ex parte" findings of respondent's board as to the fact of a public nuisance is in any way

binding upon petitioner who owns the subject Myrtle and B Street properties, and claim they are not a public nuisance.

For all the foregoing reasons petitioner did not have a full and fair opportunity to litigate the "actual controversy" of the disputed question of public nuisance at the first trial in civil action C85-1359 JPV, nor the second trial C84-1353 WWS. At the date of filing the complaints below there were no public nuisance contained in petitioner's B and Myrtle Street Buildings, and thus collateral Estoppel is not available to respondents nor applicable to petitioner's claim, nor preclude said claim from being pursued.

PETITIONER'S REPLY TO RESPONDENT'S CONTENTIONS THAT PETITIONER'S CLAIMS HAVE ALREADY BEEN DECIDED

Petitioner's claims relative to the issue of the Justiciable Controversy of the federal question relative to the Federal Declaratory Judgment Act of the disputed question of public

nuisance has never been decided nor judicially determined.

Petitioner states that the court of appeals for Ninth Circuit, actions numbers 88-15272 (DC #84-1353 WWS) and its related case order of no. 85-2715 (DC # 85-1359 WWS) were joined together for review by the court of appeals for determination on appeal based upon the fact of the District Court invoking collateral estoppel primarily as its sole source of findings, determination and judgment in both causes of actions. Request judicial notice to pp. 6, 8, and 10 of petition, dated April 6, 1990. Judge Schwarzer of the District Court prevented a finding and determination on the justiciable controversy by invoking collateral estoppel as his sole source of judicial determination for his ruling.

Petitioner's application for petition of writ of certiorari was timely filed pursuant to 28 U.S.C. 1254(1) and said claims are ripe for review by this Supreme Court. Moreover, claims can be reopened by this court and this Honorable Supreme Court held in Gondeck v. Pan Am World Airways, 382 U.S. 25, 86 S.Ct. 153, that the interest in finality of litigation, as expressed in Supreme Court Rule 58(4), under which consecutive petitions for rehearings, and petitions for a rehearing that are out of time, will not be received, must yield where the interest of justice would make unfair the strict application of that rule.

This principle was also upheld by this court in Cahill v. New York 351 U.S. 183, 76 S.Ct. 758.

PETITIONER'S REPLY TO RESPONDENT'S MOTION AND REQUEST FOR ATTORNEYS FEES.

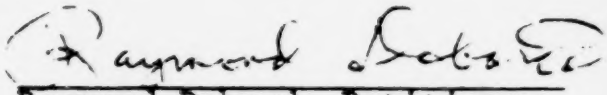
Petitioner opposes respondent's motion and request for attorney's fees because this motion was previously made and denied in the Federal District Court on November 8, 1988 and affirmed by the Court of Appeal, and thus the doctrine of collateral estoppel precludes such motion. Moreover, no attorney's fees are allowed in Civil Rights cases under the Christiansburg guidelines. Munson v. Frisbe, C.A. Wis. 1985, 754 F.2d 683.

Based on the above and foregoing, and in the interest of maintaining petitioner's rental income small business self-employment, petitioner requests this Honorable Court to, (i) grant an order to review the decision of the court below; (ii) to cast respondents with all costs of this petition for writ of certiorri; (iii) allow petitioner to remain in

the apartment rental business and not on public welfare due to his 70 years of age, by issuing a restraining order enforcing respondents from the arbitrary destruction of petitioner's remaining subject seven apartment rental units at 2941 and 2941½ Myrtle Street in the City of Oakland, California, with are vitally needed for low income and homeless residents of Oakland.

Dated: April 30, 1990

Respectfully submitted,



Raymond Dobard, Petitioner, Appellant, Plaintiff in pro persona